

RIGHT-OF-WAY USE AGREEMENT

This Right-of-Way Use Agreement (the “Agreement”) is made this _____ day of _____, 2016 by the City of Bloomington, a Minnesota municipal corporation, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 (the “City”), in favor of Southbrook Homeowners Association Inc., a Minnesota corporation (the “Association”).

RECITALS

1. The plat of SOUTHBROOK 2ND ADDITION (the Neighborhood”), attached hereto as Exhibit A, dedicates to the public, for public use, the public street right-of-way of Upton Road. The public street right-of-way is legally described as Upton Road, as dedicated in the record plat of SOUTHBROOK 2ND ADDITION, Hennepin County, Minnesota (the “ROW”).
2. The Association, whose members are owners of real property in the Neighborhood, has been formed to assure the perpetual and continuous maintenance of certain common property and entrance way areas located in and adjacent to the ROW.
3. The Association desires consent from the City to be allowed to install, construct, and maintain landscaping (the “Landscaping”) within the ROW.

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions set forth herein, the parties agree as follows:

1. Use of the ROW Area:

- a. *Landscaping:* The City hereby grants to the Association, and its successors and assigns, the use of the City’s right-of-way over, under, and across the ROW area for the purpose of installing, constructing, and maintaining Landscaping. The Landscaping shall be installed and constructed in the location depicted on the attached Exhibit B.
- b. *Use and maintenance:* The use and maintenance of the Landscaping shall be the sole responsibility of the Association until termination of the use. Should damage occur to the ROW area by the installation, construction, or maintaining of the

Landscaping area, the Association, at their sole cost, must repair or replace the ROW area.

- c. *Term of use:* The Association's rights and obligations under the use granted herein shall terminate within 60 days of written notice from the City. Should the Association wish to terminate use, the City will replace the Landscaping to low maintenance materials and native plantings as approved by the City Engineer.
2. Noninterference: It is understood that the City reserves the right to enter onto the Landscaping area on behalf of itself and other public or private utilities authorized to use the ROW area (the "Other Utilities") for necessary construction, maintenance, and repair of those utilities including but not limited to watermain, sanitary sewer, and storm sewer. Any disturbance to the Association's Landscaping caused by construction, maintenance, and repair of said utilities by the City or Other Utilities shall be restored at the Association's cost to a condition as approved by the City Engineer. The timing of the initiation of construction, maintenance, and repair of City utilities and Other Utilities is at the sole discretion of the City. The City shall keep the Association informed of its construction, maintenance and repair schedule.
3. Notice of Termination of Uses:
 - a. The use of the ROW and Landscaping areas by the Association under this agreement shall cease in accordance with the provisions of a written notice ("Notice") sent by the City to the Association.
 - b. The Notice from the City shall contain (i) a description of the public use to be made of the Landscaping area by the City (e.g., for the maintenance and/or repair of City utilities); (ii) a description of the extent to which the Association will need to terminate and vacate their uses of the Landscaping area for the City's use; and (iii) the effective date of the termination, which date shall not be earlier than 60 days from the date of Notice.
 - c. The Notice shall be sent to the address of the Association's President or its successors and assigns.
4. Severability: Invalidation of any one of the covenants or restrictions contained herein by judgments or court shall in no way affect any other provision which shall remain in full force and effect.

5. Singular and Plural: Whenever required by the context of this Agreement, the singular shall include the plural, and vice-versa.
6. Negation of Partnership: None of the terms or provisions of the Agreement shall be deemed to create a partnership between or among the parties, nor shall such terms or provisions cause them to be considered joint ventures or members of any joint enterprise. No party shall have the right to act as an agent for another party unless expressly authorized to do so herein or by separate written instrument signed by the party to be charged.
7. Amendments: This Agreement may be amended only by an instrument signed by the City and the Association.
8. Agreement Shall Continue Notwithstanding Breach: It is expressly agreed that no breach of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement. However, such limitation shall not affect in any manner any other rights or remedies which such party may have hereunder, or at law or in equity, by reason of any such breach.
9. Captions: The captions herein are inserted only for reference, and in no way define, limit, or describe the scope of this agreement, or the meaning of any provision hereof.
10. Responsibility: The City and the Association shall each be responsible for their respective acts and omissions with the respect to the Agreement, and the results therefrom.
11. Governing Law: This Agreement shall be construed and governed by the laws of the State of Minnesota.
12. Taxes: The Association shall be responsible for the payment of real estate taxes, if any, associated with the Landscaping Area until such time as this Agreement is terminated and the Association's use of the Landscaping area ceases.
13. No Vacation, Transfer, or Abandonment: Nothing herein shall be interpreted as an intent by the City to vacate, transfer, or otherwise abandon any rights or interests of the public of the City in the Landscaping and ROW areas.

SOUTHBROOK HOMEOWNERS ASSOCIATION

Its

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REVIEWED AND APPROVED

CITY OF BLOOMINGTON

By _____
City Attorney

By _____
Its Mayor

And By _____
Its City Manager

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Gene Winstead, Mayor, and by James D. Verbrugge, City Manager of the City of Bloomington, a Minnesota municipal corporation, on behalf of the corporation.

notary stamp or seal in this space

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
City of Bloomington
1800 West Old Shakopee Road
Bloomington, MN 55431

RETURN TO: Inbox No. 291-City of Bloomington

S-23

EXHIBIT A SOUTH BROOK 2ND

CITY OF BLOOMINGTON
HENNEPIN COUNTY, MINNESOTA



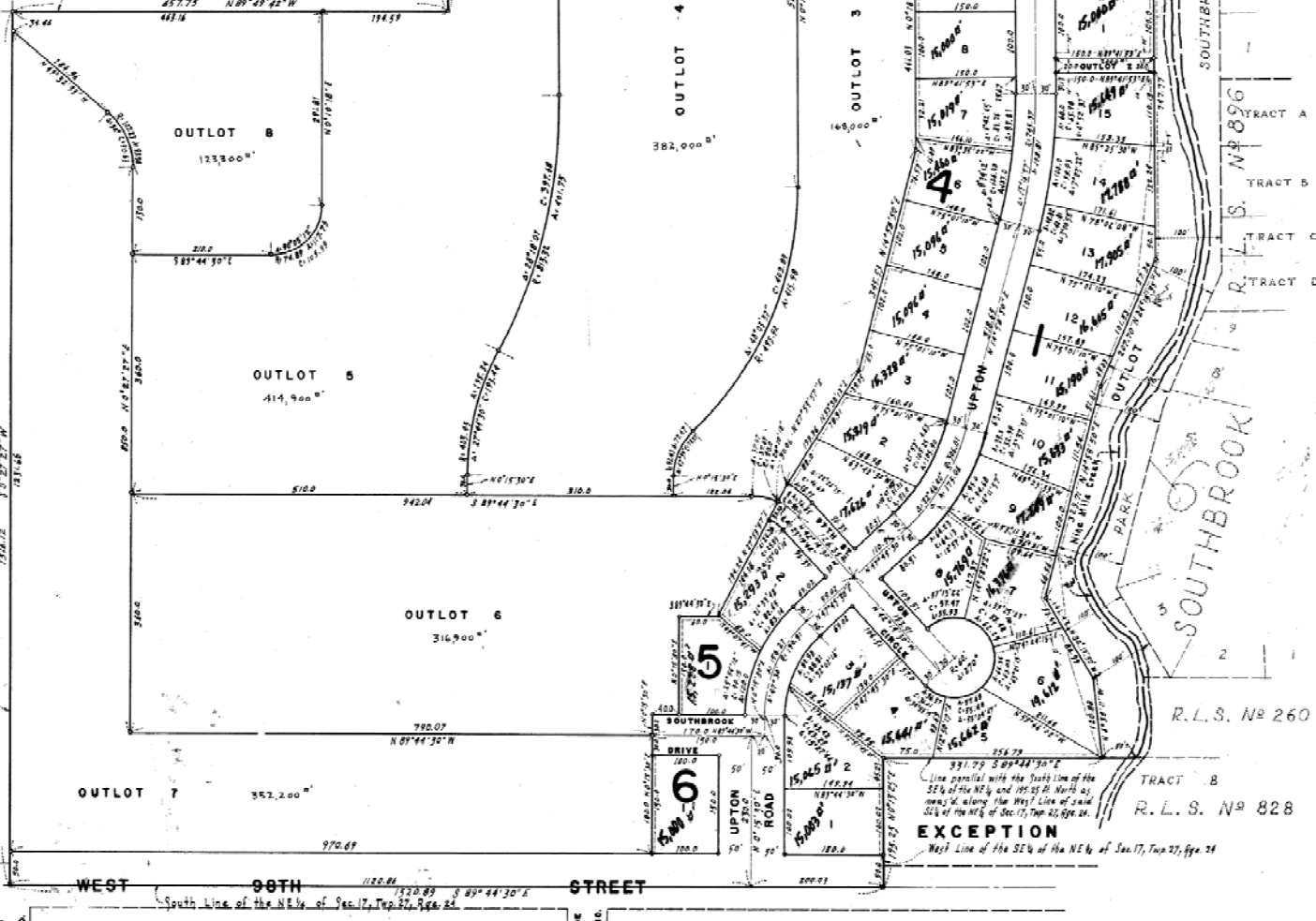
Scale: 1"=100'
"D" Denotes Iron Monument
Bearings are Assumed
Drainage and Utility Easements are
Indicated thus:
Being 5' on each side of the Lot Line
unless otherwise shown.

EXCEPTION

East of the NE 1/4 of the NW 1/4 of Sec. 17, Twp. 27, Rge. 24

South of the NE 1/4 of the NW 1/4 of the NE 1/4 of Sec. 17, Twp. 27, Rge. 24

West Line of the NW 1/4 of the NE 1/4 of Sec. 17, Twp. 27, Rge. 24
S 89° 44' 30" W
120.00



R.L.S. No 260

TRACT 8
R.L.S. No 828

EXCEPTION

West Line of the SE 1/4 of the NE 1/4 of Sec. 17, Twp. 27, Rge. 24

1962

EXHIBIT B

